

MONTANA LEGISLATIVE HISTORY

Chapter 362 19 69

Bill H 277 S _____ Original bill & history C

H. Committee on Business & Industry

Hearing Date(s) Feb 05 ☒ C

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Date Out Feb 05 ☒ C

S. Committee on Banking & Industry

Hearing Date(s) Feb 24 ☒ C

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Feb 24 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

BUSINESS AND INDUSTRY COMMITTEE

February 5, 1969

The Business and Industry Committee met on Wednesday, February 5, 1969, at 10:00 A.M. in Room 434 of the State Capitol with Chairman Pierce presiding. Sixteen members were present.

Hearings were conducted on the following bills:

HB534..Sponsor Rep. Himsel explained the bill, one to increase interest rate from 7% to 8% on motor vehicle installment loans. Mr. John Cadby appeared as a witness.

HB515..Rep. Gilligan, sponsor, appeared to explain the bill. A large group of spectators and witnesses appeared and the following persons testified in behalf of the bill: Mary Louise Date, State Plumbing Board; Merle Johns, Plumbers of Montana; James Murphy, Plumbers of Montana; John Svetich, Plumbina and Heating Contractors of Montana; and C. T. Leischner of the Masters Plumbers. Opponents to the bill were Avis Ann Tobin of the Hardward Dealers of Montana and J. J. Richardson, contractor.

HB536..Raymond Peete and Jim Walsh, representing oil companies appeared in behalf of the opposition. The bill related to drilling costs in oil operations.

HB475..Rep. Fagg presented the bill which would transfer the State Advertising Department to the State Planning and Economic Development Commission. Mr. Stan Meyer appeared in opposition.

HB461..Secretary of State Frank Murray discussed the bill, the need to eliminate the tax certificates in corporation filings.

HB277..W. B. Staven and Mr. Weldon Williams, Gordon Buckland, Carl Hendryx and Mr. Segard of Great Falls appeared for the hearing, a bill to regulate the insurance rates.

HB312..Rep. Gerke moved DO PASS. Motion carried.

HB534..Rep. Combs moved DO PASS. Motion carried.

HB461..Rep. Gerke moved DO PASS. Motion carried.

HB536..Rep. Jordan moved DO NOT PASS. Motion carried.

HB277..Rep. Combs moved DO PASS. Roll call vote showed 7 for and 6 against. Motion carried.

HB515..Rep. Mehrens moved DO PASS. Motion was called for a DO NOT PASS substitute motion by Rep. Payne. Roll call vote showed 6 against and 8 for the motion of DO NOT PASS. Vote was then called for the DO PASS as amended motion. Motion carried. Chairman Pierce asked for the committee to put it in a sub-committee for further consideration.

Meeting adjourned at 12:10.



JOHN H. PIERCE, CHAIRMAN

SENATE COMMITTEE

on

BANKING AND INSURANCE

February 24, 1969

The ninth meeting of the Committee on Banking and Insurance was held in Room 404 during noon recess, Monday, February 24, 1969. The meeting was called to order by Chairman Percy DeWolfe, a quorum being present.

HB 357 - Mr. Wesley W. Wertz, Montana Bankers Association, gave an explanation of the bill and answered questions concerning it. Mr. Bob Burke, Legislative Chairman for the Montana Bankers Association also answered questions raised on this legislation.

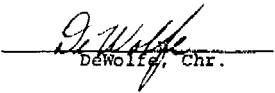
After some discussion by the committee, Senator Reber moved that HB 357 BE CONCURRED IN. The motion was seconded by Senator Sparks and unanimously carried. Senators Lehrkind and Reber will carry the bill.

HB 277 - Mr. John Risken, American Insurance Association, spoke in favor of this bill. Mr. Chadwick Smith, representing the American Mutual Insurance Alliance, also spoke in favor of this legislation. Senator Hazelbaker presented to the committee the amendments given him by Mr. Smith. (a copy of these amendments is attached) After a short discussion and questions answered the witnesses were excused.

Senator Hazelbaker moved that the first amendment be adopted. The motion was seconded and carried. Senator Hazelbaker moved that the second amendment be adopted. This motion was also seconded and carried. Senator Hazelbaker will carry the bill.

A motion was made that HB 277 AS AMENDED BE CONCURRED IN. The motion was seconded and carried.

The meeting was adjourned as these two bills were the final pieces of legislation in the Banking and Insurance Committee.


DeWolfe, Chr.

Carolyn Miller, Secretary

basis. If any revision or modification is determined to be made as a result of any such hearing, the same shall be promulgated by a written order of the commissioner, countersigned "approved" by the director of the Montana experiment station, plainly stating the revisions or modifications and the effective date or dates thereof, and any and all qualifications, exceptions or conditions connected with such revisions or modifications.

Amending clause. Section 6. Section 3-803 R.C.M. 1947, is amended to read as follows:

Exception of seeds—when. "3-803. **Exception of seeds, when.** Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

(1) When possessed, exposed for sale, or sold for food purposes only.

(2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.

(3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state."

Repealing clause. Section 7. Sections 3-801, 3-802, 3-816, 3-817, 3-818 and 3-819 R.C.M. 1947, are repealed.

Approved: March 14, 1969.

CHAPTER NO. 362

An Act to Provide for Regulation of Insurance Rates and Rating Organizations, Advisory Organizations and Joint Underwriting and Joint Reinsurance; and Repealing Sections 40-3601 Through 40-3633, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Purpose and intent.

Section 1. **Purpose and intent of chapter.** The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such

rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in rate making and other related matters.

It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

Section 2. **"Rating organization" defined.** In this chapter "rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in sections 9, 11, 12, 20 and 21 shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

"Rating organization."

Section 3. **"Advisory organization" defined.** In this chapter "advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate making, capacity. No duly authorized attorney-at-law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

"Advisory organization."

Section 4. **"Member" and "subscriber" defined.** Unless otherwise apparent from the context, in this chapter: (a) "member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

"Member."

(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member; or (2) with advisory services by an advisory organization of which it is not a member.

"Subscriber."

"Wilful."

Section 5. **"Wilful" and "wilfully" defined.** In this chapter "wilful" or "wilfully," in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

Scope.

Section 6. **Scope of chapter.** This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

- (1) Life insurance.
- (2) Disability insurance.
- (3) Reinsurance, except joint reinsurance as provided in section 20 of this chapter.
- (4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.
- (5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.
- (6) Title insurance.
- (7) Workmen's compensation or employers' liability insurance written in connection with workmen's compensation.

Rating standards.

Section 7. **Standards applicable to rates.** The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such

rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and these specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

Insurers
authorized to act
in concert.

Section 8. **Insurers authorized to act in concert.** Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

Insurers with
common
ownership—
cosurety bonds.

Section 9. **Admitted insurers with common ownership or management—matters relating to cosurety bonds.** With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

Use of rating
systems and
organizations—
agreements.

Section 10. **Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.** Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in sections 9, 12, 20 and 21, shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agree-

ment to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

Section 11. **Exchange of information or experience data—consultation with rating organizations and insurers.** Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate making and the application of rating systems.

Exchange of
information and
consultation with
rating
organizations.

Section 12. **Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval.** (a) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods, and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

Agreements to
apportion
casualty
insurance.

(b) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate (a) the use of rates which meet the standards prescribed by this chapter, and (b) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this chapter.

At any time after such agreements are in effect the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than ten (10) days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity

or practice. For good cause, and after hearing upon not less than ten (10) days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

Joint underwriters and reinsurers.

Section 13. **Joint underwriters and reinsurers.** Upon compliance with the provisions of this chapter applicable thereto any rating organization, advisory organization, and any group, association or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof, may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this chapter applicable to it.

Rating organizations.

Section 14. **Rating organizations.** No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for, and securing a license to act as, a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business, all duly certified by the custodian or the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.

Evidence prerequisite to license.

Section 15. **Evidence prerequisite to license.** To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules or policy or bond forms.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(g) Comply with the provisions of section 21.

Section 16. **Examination of application and investigation of applicant—issuance of license.** The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business as he deems desirable.

Application and issuance of license.

The commissioner shall issue the license applied for within sixty (60) days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) The business reputation of the applicant and its officers is good.

(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.

(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter.

Rules of
membership.

Section 17. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

Insurers having
common ownership
or management.

Section 18. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

Advisory
organizations.

Section 19. Advisory organizations. No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner (a) a copy of its constitution, articles of incorporation, agreement or association, and of its bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof; (b) a list of its members and subscribers; and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

Section 20. Joint underwriting and joint reinsurance. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association or organization, or by standing agreement among the members thereof, shall file with the commissioner (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Joint underwriting
and reinsurance.

Every such group, association or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association or organization may be served.

No such group, association or organization shall engage in any unfair or unreasonable practice with respect to such activities.

Section 21. Maintenance of records—necessity—contents—compliance with section—place of maintenance. Every insurer, rating organization or advisory organization, and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization,

Records.

insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

Examination
of records.

Section 22. **Records and examination.** The commissioner shall, at least once every five (5) years, and may as often as may be reasonable and necessary, make or cause to be made, an examination of each licensed rating organization, and he may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance.

In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

In examining any organization, group or association pursuant to this section, the commissioner shall ascertain whether such organization, group or association, and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

Examination of
admitted insurers.

Section 23. **Examination of admitted insurers.** The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

Section 24. **Examination of officers, managers, agents and employees.** The officers, managers, agents and employees of any such organization, group, association or insurer may be examined at any time under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group, association or insurer in the conduct of the operations to which such examination relates.

Examination of
officers, managers,
agents and
employees.

Section 25. **Payment of cost of examination.** The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association or insurer to be examined.

Cost of
examination.

Section 26. **Review of rates.** Any person aggrieved by any rate charged, rating plan, rating system or underwriting rule followed or adopted by an insurer or rating organization, may request the insurer or rating organization to review the manner in which the rate, plan, system or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within thirty (30) days after it is made, the requester may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in section 27.

Review of rates.

Section 27. **Noncompliance of rates.** If, after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or

Noncompliance of
rates.

upon sufficient complaint as provided in section 26, the commissioner has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is wilful, give notice, in writing, to such insurer, organization, group or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten (10) days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under section 28.

Hearings.

Section 28. **Hearings.** If the commissioner has good cause to believe such noncompliance to be wilful, or if within the period prescribed by the commissioner in the notice required by section 27, the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner, or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than ten (10) days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group or association. If no notice has been given as provided in section 27, such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearing shall not include any additional subjects not specified in the notices required by section 27 or this section.

**Issuance of order—
suspension or
revocation of
authority.**

Section 29. **Issuance of order—suspension or revocation of certificate or authority or license.** If, after a hearing pursuant to section 28, the commissioner finds:

(a) That any rate, rating plan or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in

what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) That the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing is wilful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing.

(d) That any rating organization has wilfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

Section 30. **Failure to comply with order—suspension or revocation of license or certificate.** In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to section 29 and effective pursuant to section 31.

Failure to
comply with order.

Section 31. **Appeals from the commissioner.** Any person, insurer or rating organization aggrieved by any order or decision made by the commissioner under this

Appeals.

chapter may appeal therefrom to the district court of the county where the aggrieved party may reside, or has his principal place of business in this state, or to the district court of Lewis and Clark County, Montana. The appeal shall be taken within thirty (30) days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within twenty (20) days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

Information not to be wilfully withheld.

Section 32. Information not to be wilfully withheld. (a) No person, insurer or organization shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable.

(b) Any person, insurer, organization, group or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty dollars (\$50), but if such failure be wilful, he or it shall be liable to the state in an amount not exceeding five thousand dollars (\$5,000) for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(c) A wilful violation of the provisions of this chapter by any person is a misdemeanor.

Section 33. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

Payment of dividends.

Section 34. Acts, etc., done by authority of chapter not violation of other laws. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

Acts under authority of chapter.

Section 35. Administration or enforcement of chapter—supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

Administration and enforcement.

Section 36. Recording and reporting of loss and expense experience.

Loss and expense experience.

(a) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this act. Such rules and plans may also provide for the

recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of country-wide expense experience.

(b) In promulgating such rules and plans the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(c) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

Repealing clause.

Section 37. Sections 40-3601 through 40-3633, R.C.M. 1947, are hereby repealed.

Approved: March 14, 1969.

CHAPTER NO. 363

An Act Relating to Nursing Homes and Nursing Home Administrators; Providing for the Licensing of Nursing Home Administrators; to Create the Montana State Board of Examiners for Nursing Home Administrators; Fixing Its Membership, and Prescribing Its Powers, Duties and Functions; Providing Requirements for Licensure as a Nursing Home Administrator; Providing for License Fees; Creating the State Board of Nursing Home Administrators' Account; Containing a Repealing Clause and an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, and as used herein:

"Board."

(a) The term "board" means the Montana state board

of examiners for nursing home administrators hereinafter created.

(b) The term "nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of an extended care facility or a nursing home, whether such individual has an ownership interest in such home, and whether his functions and duties are shared with one or more individuals.

"Nursing home administrator."

(c) The term "nursing home" means any institution or facility defined as such for licensing purpose under state law or pursuant to the rules and regulations for nursing homes by the Montana state department of health, whether proprietary or nonprofit, including but not limited to, nursing homes owned or administered by the state government or an agency or political subdivision thereof.

"Nursing home."

Section 2. **Composition of the board.** There is hereby created the state board of examiners for nursing home administrators which shall consist of five (5) members. The executive officer of the Montana state department of health, or his designee, and the administrator of the Montana state department of public welfare, or his designee, shall serve ex officio without the power to vote as members of such board. The members of the board shall be initially appointed by the governor from a list (which list shall include representatives of nursing home administrators and university units offering programs in public health or medical or nursing home care administration) of nine (9) names submitted to the governor by the board of directors of the Montana Nursing Home Association, Inc. One (1) member shall be appointed for a term of three (3) years, two (2) members shall be appointed for a term of two (2) years, and two (2) members shall be appointed for a term of one (1) year; thereafter, the terms of all appointive members shall be three (3) years. The appointees shall be selected from a list of three (3) nominees submitted for each appointee, to the governor by the board of directors of the Montana Nursing Home Associations, Inc.

Composition of board.

Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term, from a list of three (3) names submitted to the governor by the board of directors of the Montana Nursing Home Association, Inc. Appointive members may be